

**COMPANION DOCUMENT TO DOGWOOD PROJECT AGREEMENT**

RESOLUTION NO. 1971

**A RESOLUTION OF THE CITY OF GARDNER, KANSAS, AUTHORIZING THE EXECUTION OF THE DOGWOOD PROJECT AGREEMENT BETWEEN THE CITY OF GARDNER, KANSAS, AND THE KANSAS MUNICIPAL ENERGY AGENCY; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

**WHEREAS**, the Kansas Municipal Energy Agency ("**KMEA**") is a municipal energy agency organized and existing under the laws of the State of Kansas, including K.S.A. 12-885 *et seq.*; and

**WHEREAS**, the City of Gardner, Kansas (the "**City**") owns or operates a utility furnishing electricity, and the City is a member in good standing of KMEA; and

**WHEREAS**, the City is authorized to enter into contracts for the supply of electricity from any person, firm, corporation or other municipality for a period not in excess of forty (40) years under K.S.A. 12-825j; and

**WHEREAS**, KMEA expects to enter into one or more asset purchase agreements to acquire an undivided ownership interest ("KMEA's Undivided Interest") in the Dogwood Energy Facility (the "Facility"), a combined-cycle, natural gas-fueled generating station with a nameplate capacity of 650 megawatts, located in Pleasant Hill, Missouri; and

**WHEREAS**, KMEA and certain member cities, including the City, desire to form a project, through which member cities who wish to participate will obtain ownership-like benefits from KMEA's Undivided Interest in the Facility, and will equitably share in the development and other risks (including certain up-front costs) that KMEA must bear in connection with KMEA's Undivided Interest in the Facility (the "Dogwood Project"); and

**WHEREAS**, the City desires to participate in the Dogwood Project, pursuant to the terms and conditions set forth in the Dogwood Project Agreement (the "Dogwood Agreement"), in substantially the form presented to the governing body with this Resolution; and

**WHEREAS**, the City also desires to participate in a toll back arrangement until the City may economically accept the benefits of the Dogwood Agreement pursuant to the terms of the Master Power Purchase and Sale Agreement (the "Toll Back Confirmation"), in substantially the form presented to the governing body with this Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:**

**Section 1. Approval.** The Dogwood Agreement and Toll Back Confirmation are hereby approved in substantially the forms presented to the governing body this date.

**Section 2. Pledge of Revenues; Obligation to Make Payments.** The governing body of the City hereby pledges the gross revenues (the "**Revenues**") of the City's electric utility system (the "**System**") to the City's payment obligations under the Dogwood Agreement. The payments by the City for

electricity under the Dogwood Agreement shall constitute operating expenses of the System. The obligation of the City to make payments to KMEA under the Dogwood Agreement, whether or not reduced to judgment, shall not constitute general obligations of the City, and the City shall not be required to make such payments from any source other than the Revenues of the System.


**Section 3. Execution of Dogwood Agreement.** The Mayor and Clerk are hereby authorized to execute the Dogwood Agreement and Toll Back Confirmation in substantially the forms presented to the governing body this date, with such changes or additions as the Mayor and Clerk shall deem necessary and appropriate, such official's signature thereon being conclusive evidence of such official's and the City's approval thereof. The Mayor and Clerk are authorized and directed to execute any and all other documents or certificates necessary to effect the purposes set forth in this Resolution and the Dogwood Agreement.

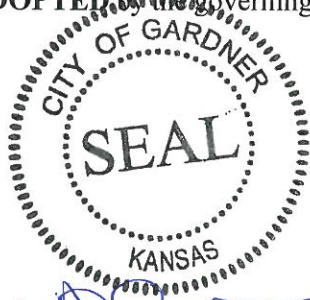
**Section 4. Effective Date.** This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

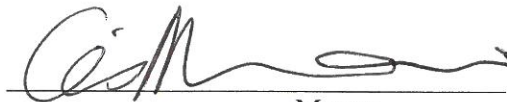
ADOPTED by the governing body of the City and signed by the Mayor this 17<sup>th</sup> day of July, 2017.

(SEAL)

ATTEST:

  
City Clerk



  
Mayor

Dogwood Project Agreement

between

Kansas Municipal Energy Agency

and

City of Gardner, Kansas

This Dogwood Project Agreement ("Agreement") is made this 17 day of July, 2017, by and between Kansas Municipal Energy Agency, a municipal energy agency organized and existing under the laws of the State, including particularly the Act (hereinafter "KMEA") and the City of Gardner, Kansas, a municipal corporation organized and existing under the laws of the State (hereinafter "City"), (KMEA and City hereinafter referred to collectively as "Parties" or, at times, individually as "Party").

WITNESSETH:

WHEREAS, KMEA consists of members (the "Members") which are (i) cities organized and existing under the laws of the State, and (ii) authorized by such laws to engage in the local distribution and sale of electric power and energy; and

WHEREAS, KMEA is authorized by the Act to plan, finance and construct projects for the purchase, sale, generation and transmission of electricity for the purpose of securing an adequate economical and reliable supply of electricity and other energy for its Members; and

WHEREAS, City owns and operates a municipal electric system and is a Member in good standing of KMEA; and

WHEREAS, City is authorized under the laws of the State, including particularly K.S.A. 12-825j and the Act, to contract to buy from KMEA capacity and energy and related products to meet City's present and future requirements for a period not in excess of forty (40) years; and

WHEREAS, KMEA has entered or expects to enter into an asset purchase agreement to acquire an Undivided Interest (as hereinafter defined) in the Dogwood Energy Facility (the "Facility"), a combined-cycle, natural gas-fueled generating station with a nameplate capacity of 650 megawatts, located in Pleasant Hill, Missouri; and

WHEREAS, the Facility entered commercial operation in 2002 and is expected to remain in service at least through 2042; and

WHEREAS, KMEA desires to form the Dogwood Project, through which Members who wish to participate will obtain ownership-like benefits from KMEA's



1.9 Dogwood Entitlement shall mean the attributes of the Facility (e.g., capacity, energy, ramp rate and ancillary services) to which KMEA is entitled as a result of its Undivided Interest in the Facility.

1.10 Dogwood Management Committee shall mean the committee or committees established under the Ownership Agreements through which decisions will be made by and information will be disseminated to the holders of undivided interests in the Facility with respect to operations, maintenance, fueling, and other major functions with respect to the Facility.

1.11 Dogwood Project shall mean the KMEA project created pursuant to this Agreement and the other Dogwood Project Agreements for the relevant Members' participation in KMEA's Undivided Interest in the Facility.

1.12 Dogwood Project Agreement shall mean this Agreement or any substantially identical agreement entered into by KMEA with another Participant.

1.13 Dogwood Project Participants' Committee shall mean the committee established pursuant to Section 7.1 of this Agreement.

1.14 Effective Date shall mean the date as of which this Agreement has been executed by both Parties, as reflected on the signature page(s).

1.15 Event of Default shall have the meaning assigned to it in Section 11.1.

1.16 Facility shall mean the Dogwood Energy Facility, as described in greater detail in the Ownership Agreements.

1.17 Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

1.18 Governmental Authority shall mean any applicable federal, state, county, municipal or other government, quasi-government or regulatory authority, agency, board, body, commission, instrumentality, court or tribunal, or any political subdivision of any thereof.

1.19 KMEA shall mean the Kansas Municipal Energy Agency, and its permitted successors and assigns.

1.20 KMEA Board of Directors shall mean the KMEA board of directors appointed by each Member pursuant to the provisions of Article V of the KMEA Bylaws



1.32 Transfer shall have the meaning assigned to it in Section 9.1.

1.33 Transferee shall mean a Person to whom a Transfer is permitted and to whom a Transfer is made or proposed to be made, pursuant to Article Eleven.

1.34 Transferor shall mean a Party making or proposing to make a Transfer to another Person pursuant to Article Eleven.

1.35 True-Up Interest Rate shall mean, for any date, the lesser of (a) 1/365 of the per annum prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published) and (b) the maximum rate permitted by applicable law. In applying the True-Up Interest Rate, interest shall be compounded daily. In the event that the prime lending rate is no longer published in *The Wall Street Journal*, KMEA and the Participants (through the Dogwood Project Participants' Committee) will select an appropriate replacement source for the prime rate.

1.36 Undivided Interest shall mean KMEA's undivided share of the Facility, whether in the form of ownership, leasehold, or otherwise, as provided for from time to time under the Ownership Agreements.

1.37 Working Capital Fund shall mean the account established and managed by KMEA, and funded by the Participants, pursuant to Section 6.10.

## **ARTICLE TWO: TERM**

2.1 Commencement of Term. This Agreement shall be effective and binding upon execution by both of the Parties as reflected on the signature page(s) below.

2.2 End of Term. This Agreement shall remain in effect until, and shall terminate upon, KMEA's receipt of City's payment in full of the final invoice properly rendered by KMEA to City under Section 6.8 for its allocable share of KMEA's Dogwood Project costs, including amounts owed under the Ownership Agreements and any amounts owed with respect to KMEA's bonds (including obligations under any related bond indenture or similar document) or other arrangements entered into to finance the pursuit and/or acquisition of its Undivided Interest in the Facility; provided, however, the Term will not exceed forty (40) years from the date of commencement of this Agreement as provided in Section 2.1. In the event that this Agreement terminates at the end of such 40-year period pursuant to this Section 2.2 and the Facility has not been retired, then unless the Parties agree to enter into a new agreement pursuant to which City will continue its participation in the Dogwood Project on terms essentially identical to this Agreement, KMEA shall assign to City, and City shall assume, all of KMEA's rights and obligations under the Ownership Agreements in an amount equal to City's Participation Percentage of KMEA's Undivided Interest in the Facility. Prior to or contemporaneously with such assignment and assumption, City shall make the final payment required pursuant to Section 6.8.

3.2 Relationship to Ownership Agreements. KMEA's Undivided Interest, Dogwood Entitlement, and rights and other terms and conditions of its use of the Facility will be determined by the Ownership Agreements and certain related agreements, such as energy management agreements, that may be in effect from time to time. The Parties acknowledge that the terms of the Ownership Agreements and other related agreements will affect the Parties' rights hereunder.

3.3 Relationship to SPP Markets. The Parties agree that this Agreement is premised on the continuing ability of KMEA to implement the Dogwood Project within the transmission footprint of SPP and the operation of SPP's centralized markets. If, during the Term, the Facility is no longer located within the SPP footprint or otherwise operating within SPP's centralized markets, or if the City's load will no longer be located within SPP, or if for any other reason the implementation of the Dogwood Project will no longer be conducted within SPP's centralized markets, then the Parties agree to undertake in good faith negotiations to amend this Agreement to provide for physical delivery to the City of its properly allocable share of the products available from the Facility, or otherwise to provide City with its properly allocable share of benefits from the Dogwood Project, through means consistent with then-applicable tariffs. The Parties acknowledge that no such amendments shall diminish City's obligation to make payments to KMEA as required pursuant to Article Five.

3.4 No Ownership Interest Conveyed. This Agreement does not create any ownership or leasehold rights on the part of City with respect to the Facility, except with respect to any period following termination of the Agreement at the end of the 40-year period (if no replacement project agreement is executed) as provided in Section 2.2.

3.5 Relationship to Financial Contracts. KMEA may sell bonds, notes or other evidence of indebtedness and may enter into other financial contracts to finance its Undivided Interest in the Facility, with the approval of the KMEA Board of Directors. Bonds may be sold in one or more series, and may be based on a fixed or variable rate of interest in accordance with one or more bond indentures. KMEA may include various covenants in the bond indentures that are deemed in the beneficial interest of the Participants. Additional bonds may be sold and issued by KMEA in accordance with the provisions of the indentures at any time and from time to time for the purpose of funding expenditures for additional facilities, enhancements, betterments or improvements related to the Facility. KMEA may incur other obligations, including interest-rate hedge agreements, pursuant to the indentures, to achieve purposes deemed beneficial to the Participants. In the event that the KMEA Board of Directors may deem it advantageous to refund any bonds, KMEA may issue and sell refunding bonds in accordance with the indentures. Any such bonds, notes, additional bonds, refunding bonds or other financial contracts may be secured by the pledge made pursuant to the indentures of the payments required to be made by City hereunder and by the other Participants and of other KMEA revenues attributable to the Facility. City and KMEA acknowledge and agree that the terms of this Agreement, and the actions of the Parties pursuant thereto, must at all times be consistent with KMEA's binding obligations under its financing documents.

(c) Unless KMEA is the load responsible entity (“LRE”) for all of the Participants, then KMEA, in consultation with the Dogwood Project Participants’ Committee, shall develop procedures by which KMEA will enable each LRE Participant (or the Market Participant representing it, which in some cases may be KMEA) to report its City Participation Percentage of the SPP-accredited capacity associated with KMEA’s Undivided Interest in the Facility for purposes of any applicable resource-adequacy provisions of the SPP tariff.

4.4 End of City’s Entitlement. City’s entitlement to the benefits associated with its City Participation Percentage of the capacity, energy and other attributes available from KMEA’s Dogwood Entitlement shall terminate when the Facility has been taken out of service for purposes of retirement and decommissioning, or (if earlier) upon termination of this Agreement, or as otherwise agreed by the Parties; provided, however, that City shall continue to be entitled to such benefits if the Parties agree to a new agreement under which City will continue to participate in the Dogwood Project, or if the assignment by KMEA and assumption by City occurs as provided for in Section 2.2.

4.5 Private Use Restrictions. Under no circumstances may any Participant’s beneficial use of attributes available from the Facility as provided hereunder be transferred to any third party(ies) if such transfer would cause KMEA or any other Participant to violate the “private business use” provisions of Sections 103 or 141 of the Internal Revenue Code, and applicable regulations promulgated thereunder.

## **ARTICLE FIVE: COST RESPONSIBILITY**

5.1 General Principle. It is the Parties’ intention that City will be responsible for its allocable share (as determined pursuant to this Article Five) of (a) the fixed and variable costs KMEA incurs in connection with its Undivided Interest in the Facility, and (b) KMEA’s administrative and other reasonable costs associated with its operation of the Dogwood Project (which shall include an allocable share of KMEA’s general costs of providing services that are not directly assignable to any given project). City’s obligation to pay for its allocable share of such costs shall be effective upon the Effective Date and continue until all amounts due hereunder are paid in full notwithstanding the occurrence of any event, the availability of the Facility, or the taking of any action permitted by this Agreement. The provisions that follow are intended to implement, but not to narrow, this intention.

5.2 Cost Responsibility Prior to Closing on the Undivided Interest. KMEA intends, to the extent reasonably possible, to capitalize its total costs (including City’s share) incurred in connection with development of the Dogwood Project and acquisition of the Undivided Interest, and to recover such capital costs through monthly capacity charges that will commence following the closing. However, each Participant may be required to make payments to KMEA for costs associated with the Dogwood Project prior to the closing in accordance with the following provisions:

(a) Upon or shortly following execution of this Agreement, KMEA shall render an invoice for, and within 30 days thereafter City shall pay, an



charges, energy charges, and administrative charges that reflect its properly allocable share of all of KMEA's net costs related to the Dogwood Project.

- (a) Each month, City's Dogwood Project capacity charge shall be an amount calculated as the sum of (i) and (ii) below.
  - (i) City shall pay its City Participation Percentage of KMEA's debt-service payments (both principal and interest) and other obligations incurred by KMEA in financing its acquisition of Undivided Interest in the Facility, including deposits to any funds or accounts established pursuant to any financing documents or by the KMEA Board of Directors (with due consideration of any input from the Dogwood Project Participants' Committee) in such amounts as are required by such financing documents or approved by the KMEA Board of Directors by inclusion in the Annual Project Budget.
  - (ii) City shall pay its City Participation Percentage of all other fixed costs associated with the Facility for the month, including without limitation KMEA's share of costs of Facility capital projects (replacements, improvements, etc.), KMEA's fixed operations and maintenance charges for the month, any other fixed costs that KMEA is obligated to bear under the Ownership Agreements, and all debt-service and related costs associated with any arrangements KMEA enters into for purposes of financing Facility capital expenses subsequent to acquisition of its Undivided Interest.
  - (iii) Capacity charges will be due in full even if the Facility is unavailable or operating at reduced output levels for all or part of a month. Capacity charges shall not be affected by any permanent increase or decrease in the rated or accredited capacity of the Facility.
  - (iv) City shall be obligated to continue making monthly capacity payments to KMEA until KMEA has fully discharged its Facility-related debt obligations (or until City pays its final invoice pursuant to Section 6.8), even if the Facility is prematurely destroyed or retired.
- (b) Each month, City's Dogwood Project transmission charge shall be its properly allocable share of all transmission-related costs paid by KMEA for the month that are directly related to the Dogwood Project and that are not otherwise reimbursed to KMEA by the City pursuant to any other agreement between the Parties. Such transmission-related costs may include, without limitation, costs of upgrades, charges to fund credits to upgrade sponsors under Attachment Z2 of the SPP tariff, and any costs

6.5 Audits. Not more than once a year, one or more of the Participants may conduct an audit of (i) records maintained by KMEA in connection with the Dogwood Project, and (ii) all costs charged to each Participant. If City wishes to initiate such an audit, it shall offer the other Participants the opportunity to participate. The costs of such audits shall be borne by the Participants that agree to participate in the audit, either directly or through reimbursement to KMEA. KMEA shall cooperate with one such audit in any given twelve-month period, by making available documents and other information reasonably requested in connection therewith, during normal business hours.

6.6 Restriction on Challenges. No challenge may be raised by the City with respect to the validity of costs incurred by KMEA under the Ownership Agreements (including challenges to the correctness and/or prudence of such costs) except to the extent that KMEA can in turn raise the challenge under the Ownership Agreements, and the resolution of any such challenge under the Ownership Agreements shall be dispositive as between City and KMEA.

6.7 Pass-Through of Refunds. If, pursuant to the Ownership Agreements, KMEA receives any refund (as opposed to credits against its monthly bills, which will simply reduce KMEA's costs to be passed through to City hereunder) of any of its Dogwood Project costs, it shall promptly pay to City an allocable share of such refund based on the same methodology and percentage or billing determinant(s) that were originally used to collect from City the charges to which the refund relates.

6.8 Final Invoice and Payment. Within ten (10) Business Days after KMEA has determined its total costs relating to the Dogwood Project following the earliest to occur of the following: (i) KMEA's participation in the Facility is terminated (whether or not KMEA ever obtained an Undivided Interest in the Facility), (ii) the Facility is destroyed or retired and the Dogwood Project is wound up, or (iii) the expiration of this Agreement after forty (40) years pursuant to Section 2.2, but in any event only after the payment in full and retirement of KMEA's bonds and any other financings related to its Undivided Interest in the Facility, KMEA shall prepare and present to City a final invoice for City's Participation Percentage of KMEA's Dogwood Project costs incurred but not reimbursed. The invoice shall credit to City its properly allocable share of the Working Capital Funds then held by KMEA. If the final invoice reflects a net amount due to KMEA, City shall submit payment of its final invoice within ten (10) Business Days. If the final invoice reflects a net amount due to City, KMEA shall make payment of that amount to City within ten (10) Business Days. KMEA shall provide as much advance notice as practicable as to the amount (or estimate thereof) and timing of the final invoice.

6.9 Unconditional Nature of Payment Obligation. All amounts payable by City under this Agreement shall be due whether or not the Facility is operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be conditioned upon the performance or nonperformance of KMEA or any other person under this Agreement or any other agreement for any cause whatsoever.

Management Committee under the Ownership Agreements. All decisions of the KMEA Board of Directors and the KMEA Executive Committee regarding the Dogwood Project shall give due weight to recommendations made by the Dogwood Project Participants' Committee, and as to financing activities shall be subject to Section 7.4.

7.2 Provision of Information Obtained Under the Ownership Agreements. The Parties recognize that KMEA's ability to obtain information about the Facility to provide to City will be governed by the Ownership Agreements. City acknowledges receipt of a copy of the current version of each of the Ownership Agreements listed on Schedule 7.2. KMEA shall:

- (a) In a timely fashion transmit to City Facility budgets prepared pursuant to the Ownership Agreements, and other information about the Facility that KMEA receives regarding (1) operating matters (*e.g.*, scheduled and unscheduled outages, variations in operating capacity of the Facility) and (2) matters that are expected to affect costs over the long term (*e.g.*, capital improvements, changes in environmental requirements).
- (b) Make reasonable efforts to obtain any specific Facility information requested by City (or the Dogwood Project Participants' Committee), pursuant to the terms of the Ownership Agreements.
- (c) Upon request by City (or the Dogwood Project Participants' Committee) make available, at a reasonable time and location, any and all information regarding the Facility in KMEA's possession that it obtains pursuant to the Ownership Agreements.

7.3 KMEA Budgets. The Annual Project Budget shall be determined by the KMEA Board of Directors (or, if action by the KMEA Board of Directors is not reasonably achievable in a timely manner, by the KMEA Executive Committee) with due consideration of any input from the Dogwood Project Participants' Committee. The Annual Project Budget shall take into account, among other things, (i) the most recent budget information for the Facility provided by the responsible project management company, (ii) KMEA's payment schedules for repayment of borrowed funds associated with its Undivided Interest in the Facility, and (iii) KMEA's projected administrative costs related to the Dogwood Project. The Annual Project Budget shall be incorporated in KMEA's annual budget. City shall have the right to review and have input on the Annual Project Budget via the KMEA Board of Directors and the Dogwood Project Participants' Committee.

7.4 KMEA Financing Activities.

- (a) City shall have the right to be informed of and have input on, via the Dogwood Project Participants' Committee, KMEA's decisions as to the appropriate financial instruments to use to finance its Undivided Interest in the Facility pursuant to Section 3.5, including decisions as to risk mitigation and the use of lowest-cost financing options.



holder of a minority Undivided Interest in the Facility will have no significant control over the operation of the Facility, City shall, proportionate to the City's Participation Percentage and to the fullest extent permitted by law, indemnify KMEA, and KMEA shall have no liability whatsoever to City, with respect to the management and operation of the Facility, or for any actions, omissions, decisions, errors, negligence, or other behavior of the Persons that will be responsible for operating and maintaining the Facility and making any improvements or repairs thereto. The Parties acknowledge that the actual costs of the Facility will likely vary from the figures set forth in any project budgets prepared by KMEA or others, and that KMEA's provision of such estimates to City shall not limit City's obligation hereunder to pay its share of the actual costs.

8.3 General Indemnification of KMEA. City expressly agrees, proportionate to the City's Participation Percentage and to the fullest extent permitted by law, to indemnify, hold harmless and defend KMEA against any and all claims, liability, costs or expenses (including without limitation attorneys' fees and expenses) for loss, damage or injury to persons or property in any manner directly or indirectly connected with or growing out of KMEA's role as a holder of an Undivided Interest in the Facility and/or the generation, transmission or distribution of capacity and energy from the Facility, unless such loss, damage or injury is the result of bad faith, gross negligence, or reckless or willful misconduct of KMEA or its employees acting within the course and scope of their employment.

8.4 Waiver of Indirect Damages. To the fullest extent permitted by law, neither Party shall be liable to the other for punitive, indirect, exemplary, consequential, or incidental damages arising in connection with this Agreement.

8.5 Waiver of Sovereign Tort Immunity. Nothing herein shall be construed as a waiver by City of the sovereign tort immunity granted to City under the laws of the State.

## **ARTICLE NINE: ASSIGNMENT**

9.1 General Limitations on Transfers. Except as otherwise provided in this Article Nine, neither Party may sell, lease, assign, transfer, convey or otherwise dispose of in any manner, directly or indirectly (collectively, "Transfer") all or any part of its rights, obligations, benefits, advantages, titles and interest in this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed, and any such Transfer in contravention of this Article Nine shall be null and void *ab initio*. For purposes of this Section 9.1, any ground that is reasonably likely to have an adverse effect on the non-transferring Party may constitute a ground for withholding or conditioning its consent and shall be described to the Transferor in reasonable detail if consent is denied.

9.2 Notice of Proposed Transfer. If a Party desires to Transfer its interest in this Agreement, then no less than one hundred twenty (120) days prior to such proposed Transfer, the Transferor shall provide written notice thereof to the other Party. The notice shall identify the proposed Transferee and the date on which the Party proposes to effect the Transfer.

(a) at the time of the Transfer, either (i) the Transferor must not be in default of any of its material obligations under this Agreement or (ii) such default must be cured on or prior to the date of the Transfer; and

(b) the Transferor shall deliver to the other Party documents satisfactory to it evidencing Transferee's acceptance of the Transfer and assumption of all of the Transferor's obligations under this Agreement.

9.6 Prohibited Transfers. Notwithstanding anything in this Article Nine, no Transfer of this Agreement will be permitted if it would jeopardize the tax-exempt status of any of KMEA's bonds, or if it would violate the Ownership Agreements.

## ARTICLE TEN: DISPUTE RESOLUTION

10.1 Dispute Notice. If a dispute arises between the Parties, then the aggrieved Party may provide written notice thereof to the other Party, including a detailed description of the subject matter of the dispute.

10.2 Negotiations. Representatives of the Parties shall in good faith attempt to resolve such dispute by informal negotiations within ten (10) Business Days from the date of receipt of a dispute notice under Section 10.1.

10.3 Involvement of Senior Executives. If the dispute is not resolved within ten (10) Business Days following receipt of the dispute notice or such later date as the Parties may mutually agree, then each Party shall promptly designate its most senior executive responsible for the subject matter of the dispute who shall have authority to resolve the dispute. The senior executives shall obtain such information as may be necessary to inform themselves of the substance and particulars of the dispute and shall meet within twenty (20) Business Days, at a time and place mutually acceptable to the senior executives.

10.4 Arbitration. If the senior executives are unable to resolve the dispute within twenty (20) Business Days of their first meeting or such later date as the senior executives may mutually agree, then the dispute shall, subject to Section 10.5, be resolved solely and exclusively by binding arbitration, using the following procedures (absent agreement of the Parties to different procedures).

(a) The arbitration shall be conducted before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect, except as modified herein. The Party seeking relief from the other Party shall prepare and submit a request for arbitration (the "Demand"), which will include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief. The Demand shall be accompanied by all relevant supporting documents.

(b) Unless the dispute uniquely affects just one Participant, each other Participant that is affected by the dispute shall, for purposes of a particular

10.5 Agency Jurisdiction. Notwithstanding anything to the contrary in Section 10.4, the Parties acknowledge and agree that a dispute over which a Governmental Authority has exclusive jurisdiction shall, in the first instance, be brought before and resolved by such Governmental Authority.

## **ARTICLE ELEVEN: DEFAULT AND REMEDIES**

11.1 Events of Default. The following shall be Events of Default under this Agreement:

- (a) The failure of City to make a payment (including any required contribution to the Working Capital Fund) when due under this Agreement (a "Payment Default"); or
- (b) Assignment of this Agreement by City other than as permitted pursuant to Article Nine or any other action or omission by City that would jeopardize the tax-exempt status of any of KMEA's bonds or cause KMEA to be in breach of any provision of the Ownership Agreements; or
- (c) The failure of a Party to perform or abide by any other material obligation under this Agreement within 60 days of receipt of written notice of non-performance; *provided, however*, that if such default cannot be cured within such 60-day period, no Event of Default shall occur for so long as the non-performing Party is diligently pursuing a cure, and such non-performance is curable; or
- (d) The commencement, with respect to a Party, by such Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights or a petition is presented or instituted for its winding-up or liquidation.

11.2 Remedies. If a Party fails to perform or breaches any of its material obligations under this Agreement, then the non-defaulting Party shall be entitled to exercise all remedies available to it at law or in equity (except as limited in Section 8.4 and Section 11.6, and subject to the provisions of Section 10.4). The Parties acknowledge and agree that monetary damages may not be an adequate remedy at law for the failure of a Party to perform certain material obligations under this Agreement, and under such circumstances, the non-defaulting Party shall have the right to specific performance by the defaulting Party of such obligations under this Agreement.

11.3 Suspension of Market Revenues. If City has committed a Payment Default, KMEA may temporarily suspend City's right to receive its share of SPP market revenues under Article Four. Such suspension shall continue until the earlier of (i) City shall have cured such Payment Default or (ii) City's project share has been permanently transferred or sold in accordance with Section 11.5.



Participant having a City Nameplate Capacity Share in excess of 120% of its original City Nameplate Capacity Share without the prior consent of the transferee Participant. If operation of this section would have such result and the transferee Participant does not consent, the other non-defaulting KMEA Dogwood Participants shall have their shares increased in proportion to their original City Nameplate Capacity Shares, subject to the cap of 120%.

(d) In the event that less than all of the defaulting Participant's City Nameplate Capacity Share shall be disposed of pursuant to Sections 11.5(a), (b) or (c), KMEA shall use its reasonable best efforts to sell the remaining portion of a defaulting Participant's City Nameplate Capacity Share on such terms and conditions as are acceptable to KMEA to any person, firm, association or corporation, public or private; provided, however, that KMEA shall make no such sale in such amounts, for such periods of time and under such terms and conditions as will cause the interest on any tax-exempt bonds to lose their exclusion from gross income for federal income tax purposes.

(e) If City is a defaulting Participant, it shall remain liable under this Agreement in all events absent outright termination of this Agreement by KMEA in its sole discretion and subject to the provisions of any applicable bond indenture, except that City's obligation to pay KMEA shall be reduced to the extent that payments shall be received by KMEA for that portion of City's Nameplate Capacity Share disposed of as provided in this Section 11.5.

(f) In the event of a termination of any Participant and reallocation of its City Nameplate Capacity Share pursuant to this Section 11.5, KMEA shall prepare a revised Schedule 4.1 reflecting the revised City Nameplate Capacity Shares and City Participation Percentages, and all other applicable shares and percentages, of all Participants.

11.6 No Termination by City. In response to any Event of Default by KMEA, City shall not have the right to terminate this Agreement.

11.7 No Liability of KMEA Relating to Provision of Information. Notwithstanding any provision to the contrary contained in this Agreement, the Parties acknowledge and agree that KMEA shall not be liable for monetary damages to City arising from or in connection with any reports, notices, certificates, documents, information or data of any kind or nature (whether or not prepared by or on behalf of KMEA) provided to City pursuant to or in connection with this Agreement.

continuing covenant with respect to this Section 12.2(d) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit or other legal action involving or related to this Agreement.

(e) City is and shall remain throughout the term of this Agreement a Member of KMEA.

(f) City is and shall remain throughout the term of this Agreement a “political subdivision” of the State within the meaning of Section 103(a) of the Internal Revenue Code.

(g) City will establish, maintain and collect such rates, fees and charges for the electric service of its electric utility system so as to provide revenues at least sufficient to enable City to make all payments required to be made by it under this Agreement and any other agreements with respect to its electric utility.

(h) The obligations of City to make payments under this Agreement shall be limited to the obligation to make payments from revenues of its electric utility system and available electric utility system reserves. All payments made by City pursuant to this Agreement shall constitute operation and maintenance expenses of its electric utility system. The City shall not be obligated to levy any taxes for the purpose of paying any amount due under this Agreement. The City shall not issue any evidence of indebtedness with a lien on electric system revenues that is prior to the payment of operating and maintenance expenses.

(i) The City covenants to maintain its electric system in good repair in accordance with Good Utility Practice, to cooperate with KMEA, and to keep accurate records and accounts.

(j) The City shall not sell, lease or otherwise dispose of all or substantially all of its electric system, nor shall the City assign all or any part of its City Nameplate Capacity Share or any or all of its interests under this Agreement, except upon the approval of KMEA pursuant to Article 9, such approval not to be unreasonably withheld or delayed.

(k) City’s electric utility system shall not be made a part of an integrated utility system subsequent to the Effective Date of this Agreement if, in the opinion of a consulting engineer of national reputation selected by KMEA, the revenues of any other utility system(s) to be so integrated would not reasonably be expected to equal or exceed the costs and expenses thereof.

(l) The City shall not transfer to any other Person the beneficial use of City’s entitlement to the attributes of the Facility under this Agreement, or operate its system in any manner or for any purpose, or take or omit to

from time to time, or any similar rules or regulations applicable to KMEA related to the Dogwood Project or any bonds or other indebtedness issued or incurred in connection with this Agreement.

#### **ARTICLE FOURTEEN: MISCELLANEOUS**

14.1 Applicable Law. The rights and obligations of the Parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State, without regard to conflicts of law doctrines.

14.2 Jury Trial. EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

14.3 Notices. Unless otherwise expressly provided for in this Agreement, all communications and notices to a Party in connection with this Agreement shall be in writing, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), or (c) above shall be addressed as follows, or to such other address as any Party may designate by written notice to the other Parties.

For notice to KMEA:

Kansas Municipal Energy Agency  
6300 West 95th Street  
Overland Park, KS 66212  
Email: mahlberg@kmea.com  
Attention: General Manager

For notice to City:

City of Gardner, Kansas  
120 East Main  
Gardner, KS 66030  
Attention: City Administrator



14.12 Survival. Except for Articles Eight, Ten and Eleven, the confidentiality requirements in Section 7.5, and Articles Five and Six (to the extent applicable to obligations arising prior to termination, including without limitation Section 6.8), which shall survive termination of this Agreement, and except as otherwise expressly provided in this Agreement, the representations, warranties and obligations of each Party contained in this Agreement shall not survive the termination of this Agreement either in its entirety or as to a particular Party in accordance with its terms.

14.13 Further Assurances. Each Party shall promptly and duly execute and deliver such further documents and assurances for and take such further actions reasonably requested by the other Party, all as may be reasonably necessary to carry out the purposes of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and delivered under seal by its duly authorized representative as of the date set forth below.

## KANSAS MUNICIPAL ENERGY AGENCY

By: 

Name: Paul N. Mahlberg

Title: General Manager

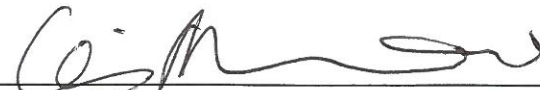
Attest: 

Name: SAM MILLS

Title: MANAGING DIRECTOR, ELECTRIC OPS

Dated: 8/2/17

## CITY OF GARDNER, KANSAS

By: 

Name: Chris Morrow

Title: Mayor

Attest: 

Name: Kimberly A. Garrison

Title: City Clerk

Dated: 7/24/17

A	B	C	D	E
Participant	Original City Nameplate Capacity Share (MW)	Step-up Cap (120% of Column B)	Current City Nameplate Capacity Share (MW)	City Participation Percentage
Garden City	31.77	38.124	31.77	48.39%
Gardner	21.18	25.416	21.18	32.26%
Lindsborg	2.12	2.544	2.12	3.23%
Ottawa	5.29	6.348	5.29	8.06%
Russell	5.29	6.348	5.29	8.06%
Total	65.65		65.65	100.00%

## SCHEDULE 7.5

### CONFIDENTIALITY PROVISIONS OF OWNERSHIP AGREEMENTS (AS OF JULY, 2017)

#### Section 5.02 of the Asset Purchase Agreement:

No Party shall disclose or otherwise make available to any other Person (other than such Party's Affiliates, employees, officers, directors, legal advisors, financial advisors, rating agencies and accountants, and current or prospective lenders or prospective purchasers, provided each such Person agrees to maintain the confidentiality of such information) the terms of this Agreement and the Books and Records (as such term is defined in the Participation Agreement) (collectively, the "Confidential Information") without the prior written consent of the other Party, except to the extent that disclosure of such Confidential Information is required by court order, a Governmental Authority or applicable Law (including the Kansas Open Records Act ("KORA"), K.S.A. 45-215 et seq., as amended, the Kansas Open Meetings Act ("KOMA"), KSA 75-4317 et seq. and any state or federal securities Laws) or the rules of any recognized national stock exchange. Confidential Information shall not include information which (a) the Party can demonstrate was known to it prior to its disclosure by the other Party; (b) is, or later becomes, public knowledge without breach of this Section 5.02 by such Party; (c) was received by such Party from a third party without obligation of confidentiality; or (d) is developed by such Party independently from Confidential Information received from the other Party, as evidenced by appropriate documentation. In the event that disclosure of Confidential Information in the possession of a Party is required by any Governmental Authority, applicable Law (other than KORA, KOMA or any state or federal securities Laws) or the rules of any recognized national stock exchange, the Party subject to such requirement shall promptly notify the other Party of the request or demand. The Party receiving notice of such disclosure requirement may, at its own expense, intervene to prevent disclosure or to seek to obtain confidential treatment for all or a portion of the Confidential Information required to be disclosed. Notwithstanding the foregoing, either Party is authorized to disclose to the public any information necessary for the Party's compliance with federal securities Laws related to the issuance of any financing obligations, or to comply with reasonable requests from any underwriters, prospective lenders or rating agencies.

#### Section 19.13 of the Participation Agreement:

No Participant shall disclose or otherwise make available to any other Person (other than such Participant's Affiliates, employees, officers, directors, legal advisors, financial advisors, rating agencies and accountants, and current or prospective lenders, Participant Lenders or prospective purchasers provided each such Person agrees to maintain the confidentiality of such information) the terms of this Agreement and the Books and Records ("Confidential Information") without the prior written consent of the other Participants, except to the extent that disclosure of such Confidential Information is required by court order, a